

# Doing Business In Missouri...

## Legal Formation

*A joint project of:*



**OUTREACH & EXTENSION**  
**UNIVERSITY OF MISSOURI**  
**LINCOLN UNIVERSITY**



**MISSOURI**  
**SMALL BUSINESS**  
**DEVELOPMENT CENTERS**

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May 2000

# Table of Contents

<b>Acknowledgments</b>	<b>3</b>
<b>Preface</b>	<b>4</b>
Resource Agencies	4
Icons Used in This Book	4
Assistance For Speech and Hearing Impaired	5
Disclaimer	5
University Outreach and Extension	5
Small Business Development Centers	5
<b>Legal Formation</b>	<b>6</b>
Advantages and Disadvantages of a Business Structure	7
THE FOUR TYPES OF BUSINESS STRUCTURES	8
SOLE PROPRIETORSHIP	8
PARTNERSHIP	8
General Partnerships	9
Limited Partnerships	9
CORPORATION	9
General Business Corporations	11
Subchapter S Corporation:	11
Close Corporation:	12
Not-For-Profit Corporations	12
Professional Corporations	13
LIMITED LIABILITY COMPANIES (LLC)	13
JOINT VENTURES	14
FICTITIOUS NAME REGISTRATION	14
TAX CONSIDERATIONS	15
OWNERSHIP CONSIDERATIONS	15
ESTATE PLANNING CONSIDERATIONS	16
GOING OUT OF BUSINESS CONSIDERATIONS	16
FRANCHISES	17
PROTECTION OF INTELLECTUAL PROPERTY	17
Patents	17
Trademark and Service Mark	17
ACQUIRING OR MERGING WITH OTHER BUSINESSES	18
Purchase of Existing Business	19
EMPLOYER IDENTIFICATION NUMBER (EIN)	20
OCCUPATIONAL LICENSES	20
STATE LICENSE AND PERMIT REQUIREMENTS	21
State Business Licenses, Fees, Permits and Regulations	22
Motor Vehicle Licensing, Registration	22
Commercial Drivers Licensing	23
LOCAL LICENSES AND PERMITS	23
Local Zoning Regulations	23

# Acknowledgments

This edition of *Doing Business In Missouri...Legal Formation* is published by the Missouri Department of Economic Development's Missouri Business Assistance Center (MBAC) in collaboration with University Outreach and Extension and the Missouri Small Business Development Centers.

Thanks and appreciation goes to the following individuals, who provided advice, content and helped with the editing of the final product:

Roy Thirtyacre, Missouri Business Assistance Center  
Donna Lucas, Missouri Business Assistance Center  
Alan Hauff, University Outreach and Extension, University of Missouri-St.Louis  
Glen Giboney, SBDC, Truman State University  
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Buz Sutherland, SBDC, Southeast Missouri State University  
Virgil Woolridge, University Outreach and Extension, Mexico  
Missouri Department of Revenue, Division of Taxation  
Missouri Secretary of State's Office

# Preface

Missouri businesses contribute significantly to the economy of the state by creating new jobs and expanding markets for Missouri products.

*Doing Business In Missouri...Legal Formation* is designed to provide information to new or existing business owners on legal forms of organization recognized in the state.

## RESOURCE AGENCIES

Additional copies of this publication or assistance in getting your new business started can be obtained from your county University Outreach and Extension office or regional Small Business Development Center. Contact information for these organizations can be found in your local telephone directory. You can also contact the Missouri Business Assistance Center:

Missouri Business Assistance Center  
Missouri Department of Economic Development  
301 West High Street, Room 720  
P.O. Box 118  
Jefferson City, MO 65102-0118  
Phone: 1-888-751-2863  
Fax: 573/526-2416  
E-mail: [mbac@mail.state.mo.us](mailto:mbac@mail.state.mo.us)  
Web: <http://www.ecodev.state.mo.us/mbac>

## ICONS USED IN THIS BOOK

The following icons are used throughout this book to alert you to important information:



Identifies state or federal forms that must be filed.



Carefully read and comply with these requirements. This icon designates information that may be critical to your new business endeavor. Generally, contains legal, licensing or regulatory information.



Designates information or resources that you should “check out.”



Highlights helpful or cautionary information. Generally this refers to state or federal regulations that may affect your business; also references important resources and helpful hints.

## **ASSISTANCE FOR SPEECH AND HEARING IMPAIRED**

Assistance for the speech and hearing impaired is available through RELAY MISSOURI at 1-800-735-2466 (voice) or 1-800-735-2966 (TT). Copies of this publication are made available on audiotape for the visually impaired. Please contact the Wolfner Library for the Blind and Physically Handicapped (573/751-8720 or 1-800-392-2614) for ordering information.

## **DISCLAIMER**

This publication is intended to serve as a reference document and in no way attempts to provide all of the information necessary to finance a business in Missouri. It is published with the understanding that the publisher is not engaged in rendering legal, accounting or other professional services. The advice of an attorney and/or accountant should be sought before entering into any business activity or contract.



**OUTREACH & EXTENSION**  
**UNIVERSITY OF MISSOURI**  
**LINCOLN UNIVERSITY**

## **UNIVERSITY OUTREACH AND EXTENSION**

This project is supported by the University of Missouri Outreach and Extension Outreach Development Fund.



**MISSOURI**  
**SMALL BUSINESS**  
**DEVELOPMENT CENTERS**

## **SMALL BUSINESS DEVELOPMENT CENTERS**

Small Business Development Centers operate in partnership with the U.S. Small Business Administration under Cooperative Agreement No. 0-7620-0026-12. The support given by the U.S. Small Business Administration through such funding does not constitute an express or implied endorsement of the co-sponsor(s)' or participants opinions, products or services. Programs are nondiscriminatory, and reasonable accommodations will be made, upon request, for persons with disabilities.

This publication was supported by the Missouri SBDC in partnership with the U.S. Small Business Administration

# Legal Formation

***Selecting the proper business structure under which you will operate your business is one of the most important decisions that you will make. Many new business ventures develop without a great deal of planning and this lack of planning can result in predictable difficulties for the new business and contribute to its failure.***

**M**issouri law allows individuals to operate under four forms or organization:

- sole proprietorships
- partnerships
- corporations
- limited liability companies

Each of these structures has its own advantages and disadvantages and there are many modifications and variations within these forms, but the key to selection revolves around the concept of liability and taxation. The entrepreneur, the founder of the business, must decide which of these four structures best suits the type of business. In choosing your business structure, consult with both a qualified accountant and attorney who are familiar with your resources and objectives.



While it is possible for a business to start under one structure and change to another later, proper planning can prevent the difficulties, expenses and operational problems which would result from such a change. Even when considerable thought and planning have been given to the initial structure, however, the entrepreneur should be aware that change of circumstances and conditions may require a change in structure even after the business is established and operational.

A description of the forms of organization and some of the advantages and disadvantages follow:

## Advantages and Disadvantages of a Business Structure

	SOLE PROPRIETORSHIP	PARTNERSHIP / REGISTERED LIMITED LIABILITY PARTNERSHIP	LIMITED LIABILITY COMPANY (LLC)	S CORPORATION	C CORPORATION
Legal Liability	Unlimited	Unlimited for general partnership, limited for RLLP	Limited, same as RLLP or corporation	Limited	Limited
Continuity of the Entity	Limited to life of proprietor	Limited, unless provided for in partnership contract	Dissolve date	Perpetual Life	Perpetual Life
Acquisition of Capital	Limited to only what the proprietor can secure	Generally limited to what partners collectively can raise	Generally limited to what members collectively can raise	Maximum of 75 stockholders, but capital generally not raised by selling stock	Unlimited number of stockholders, but capital generally not raised by selling stock
Transfer of Interest	Easy because all assets owned by individual proprietor	Right to distributions easy to transfer; interest in assets and right to management cannot be transferred without consent of other partners	Economic rights are transferable, management rights transferable with consent of other members	Stock easy to transfer unless restricted by agreement, by articles of incorporation or by being statutory close corporation	Stock easy to transfer unless restricted by agreement, by articles of incorporation or by being statutory close corporation
Management	All management decisions by proprietor	Usually all general partners will be actively involved in management activities	Usually managed by members, but can have separate managers with duties as outlined by the operating agreement	Managed by directors, who are elected by shareholders unless statutory close corporation has chosen to eliminate directors	Managed by directors, who are elected by shareholders unless statutory close corporation has chosen to eliminate directors.
Taxation of Income and Expenses	All income and expenses reported on proprietor's individual tax return	Divided among partners in accordance with investment or partnership agreement and reported on partners' individual returns	Divided among members in accordance with investment or operating agreement and reported on members' individual returns	Passed directly through to the shareholders according to the amount of stock held. Generally no income tax paid by corporation	Taxed separately at the corporate level, again at the shareholder level if distributed as a dividend
Liquidation of Entity	At the discretion of the proprietor, treated as sale of individual assets	Required upon withdrawal of a partner unless partnership agreement permits business continuation	Same as partnership	Normally a two-thirds vote of shareholders is required	Normally a two-thirds vote of shareholders is required
Major Advantages	Independence, flexibility, minimum of legal requirements	Additional management input and operational responsibilities shared, additional capital and equity available, flexibility, shared overhead means increased profits, limited liability with RLLP	Same as partnership plus limited liability without having to file annual document, can be treated as any business form for income tax purposes	Limited liability, profits taxed once, direct pass through of income and expenses to shareholder	Limited liability, can offer fringe benefits to owners and deduct them for income tax purposes
Major Disadvantages	Unlimited liability, limited life, limited management ability, limited investment potential	Unlimited liability unless RLLP, annual renewal filing to keep RLLP, limited life, relations among partners can cause problems, changes of partners or partnership agreement may be difficult	Relations among members can cause problems, changes of members or operating agreement may be difficult	Not every corporation can qualify, cannot deduct fringe benefits for owners or their families, relations among shareholders or directors can cause problems	Difficult to get assets out or to sell business without double tax, relations among shareholders or directors can cause problems

Check with the Secretary of State's  
Name Availability Desk (573/751-3317)  
to determine if the business name you have  
selected is available.

## THE FOUR TYPES OF BUSINESS STRUCTURES

### SOLE PROPRIETORSHIP

The most common form of a new business is sole proprietorship. This is a business owned by a single individual.

The greatest advantage of sole proprietorship is that no planning for structure is required, and the individual owner is free to operate as she or he chooses.

Some disadvantages of sole proprietorship are the limited opportunity for expansion and the owner's personal responsibility for all obligations, debts and other liabilities the business may incur. While insurance is available for protection from these hazards, the cost may be prohibitive. Growth of a sole proprietorship will usually result in a change from this structure.



Forms required: Fictitious Name Registration

Forms available at: (<http://mosl.sos.state.mo.us/forms/sosforms.html>)

### PARTNERSHIP

A partnership is the joining of one or more individuals, corporations or other entities under a partnership agreement. The law does not recognize the partnership as a separate distinct entity; rather, it considers the partnership to be all of the partners acting together.

All powers, liabilities and authorities of the partners are controlled and limited by the partnership agreement. However, it is possible for a partner to exceed his or her authority and for the partnership to be bound when the person with whom the partner does business is not aware of the limitations contained in the partnership agreement. Partnership agreements are in writing and, if there are limitations placed upon individual partners, such agreements should be made available to any person or company with whom the partnership does business.

There are three types of partnerships recognized under the law: general partnerships, limited partnerships and limited liability partnerships.



## **General Partnerships**

Most states, including Missouri, legislate the formation of general partnerships. Missouri has adopted the Uniform Partnership Law that is the standard in many states. However, the uniform law is not identical in every state. Notice should always be made of the unique aspects of the law within each state in which the partnership is conducting business.

The advantages of a general partnership are that the partners may conduct any legal business and the income and expenses of the partnership are directly taxable to each individual partner based on his or her proportionate interest within the partnership. The partnership files an information tax return and pays no income tax itself.



Forms required: Fictitious Name Registration

Forms available at: <http://mosl.sos.state.mo.us/forms/sosforms.html>)

## **Limited Partnerships**

The laws of the various states, including Missouri, permit the formation of a partnership in which the liability of most of the partners is limited. Limited partnerships must have at least one general partner who is responsible for all debts, liabilities and other obligations of the partnership.

As a general rule, the liability of the other partners, referred to as limited partners, is limited to the amount that each partner has invested or agreed to invest in the partnership. A limited partner should not take an active role in the business. By taking an active role, a limited partner risks becoming a general partner.

The advantage of a limited partnership over a general partnership is that most of the partners limit their liability while preserving the right to participate in profits and/or tax advantages.

While limited partnerships lost some of their usefulness under the Tax Reform Act of 1985, they still remain a very viable structure for certain types of businesses.



Forms required: Must file a Certificate of Limited Partnership; contact Secretary of State's Office (573/ 751-3317) and request a copy of form LP#41.

Forms available at: (<http://mosl.sos.state.mo.us/forms/sosforms.html>)

## **CORPORATION**

Before considering the advantages and disadvantages of a corporation as a business structure, it is important to understand the concept. A Corporation is a legally created entity with right, duties, powers and responsibilities in and of itself. Each state has a section of law covering those aspects of corporations. The law is similar in each state, but not identical.

A Corporation cannot act except through individuals. When individuals perform on behalf of a corporation, the actions are usually attributable to the corporation and not to the individual. The ownership of property, the incurrence of debt, and the performance of services and sales of goods are the responsibility of the corporation rather than the individuals in the corporation.

Shareholders contribute capital to the company and are the owners of the corporation. Shareholders are not responsible for the debts or liabilities of the corporation.

One advantage of the corporate structure is that shareholder liability is limited to the loss of the shareholder's investment unless a shareholder accepts additional responsibility such as guaranteeing a loan to the company. Limitation of liability was the original reason for the creation of the corporate entity and it is still a basic consideration in the formation of any new business using the corporate structure.

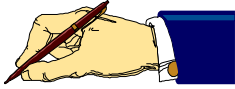
An additional advantage of corporations is the ability to bring other individuals into ownership of the business to raise additional funds.

There are few disadvantages to using the corporate form in setting up a business. Some minor costs are incurred for incorporating and for annual filing fees within states in which the corporation is doing business.

Both state and federal governments recognize the existence of a corporation and levy an income tax against the corporation. However, a corporation may elect to be taxed as an individual. (see "Tax Considerations" on page 32).

Corporations are subject to the following requirements:

- File articles of incorporation;
- Adopt a set of bylaws;
- Observe other corporate formalities on a regular basis such as the election of directors by shareholders and appointment of officers by action of the board;
- File Form SS-4 with the IRS to obtain an Employer Identification Number (EIN), even if there are no employees;
- File the required state and federal estimated tax, quarterly;
- File federal income tax on Form 1120, or Form 1120-S for an Subchapter S Corporation, and state income tax on Form 1120 or 1120-S;
- File an annual report and pay annual fee to continue corporation with the Secretary of State's Office.



#### Forms required:

##### **Corporation:**

Fictitious Name Registration  
Federal Employer Identification (EIN) SS-4  
Schedule of Corporation Fees and Charges:  
Domestic For Profit Instruction Sheet:  
Articles of Incorporation of a For Profit Corp (form)

##### **Foreign (non-Missouri) Corporation:**

Fictitious Name Registration  
Federal Employer Identification (EIN) SS-4  
Application for Certificate of Authority to do business in Missouri  
Application for Foreign Corporation for a Certificate of Authority (form)

Forms available at: (<http://mosl.sos.state.mo.us/forms/sosforms.html>)

### **General Business Corporations**

While there are four types of corporations, entrepreneurs will most probably use the general business corporation. The most common form of corporation, the general business corporation, is also known as a for profit corporation.

A general business corporation may engage in most activities except those that are specifically prohibited by law. It may not engage in business for which license are required, such as the practice of law or medicine. A general business corporation may pursue other businesses such as banking, insurance or financing if state approval is obtained.

#### **Subchapter S Corporation:**

Provides the legal protection of a corporation, but for tax purposes, the income or loss is passed on to the shareholders in proportion to their ownership. It is important to note that to be recognized as a Subchapter S Corporation, the corporation must apply to the Internal Revenue Service (IRS) for “S Status” -- request form 2553.

A Corporation can elect “S” status if it meets the following requirements:

1. It must be a domestic corporation.
2. It must have only one class of stock.
3. It must not have more than 35 shareholders.
4. It has a calendar tax year or a business purpose for adopting a fiscal year.

5. It must have only individuals and their estates and certain trusts as shareholders.
6. All shareholders must be citizens or residents of the U.S.
7. It must not be a member of an affiliated group of corporations.

### **Close Corporation:**

Missouri law allows for the creation of close corporations (sometimes referred to as “C corps”). Missouri’s law is based on the Model Business Corporation Act. Missouri’s Close Corporation Law is designed to make it easier for one or a few persons to do business as a corporation. Under this law, a close corporation can choose not to have a board of directors, annual meetings or bylaws if so stated in the article of incorporation. (See Section 351.315 of Missouri Statutes for more information).

A regular business corporation may become a statutory close corporation if it has fifty or fewer shareholders and amends its articles, with a 2/3 vote, to state that it is a statutory close corporation.

### **Not-For-Profit Corporations**

The main distinction between a not-for-profit corporation and a general business corporation is that a not-for-profit corporation has members who receive certificates of membership rather than share. The profits and properties of the corporation do not belong to the members.

A not-for-profit corporation may pay reasonable compensation to its employees and may make a profit, which means that it has more income than expenses. Hospitals are good examples of not-for-profit corporations. To qualify as a not-for-profit corporation, the company must have an ultimate purpose, specified by law, such as a charitable, educational, civic, religious, or cultural purpose.

Many not-for-profit corporations are tax exempt. However, merely forming a not-for-profit corporation under Missouri State law does not guarantee that the state or federal government will treat the organization as tax exempt. Separate qualifications are required for tax-exempt status.



#### **Forms required:**

Domestic Nonprofit Instruction Sheet.

Important Notice for Persons Forming Missouri Not for Profit Corp.

Articles of Incorporation of a Nonprofit Corp (form).

Nonprofit Corporation Application for Certificate of Authority To Do Business in Missouri.

Application for Certificate of Authority of a Foreign (non-Missouri) Nonprofit Corporation (form)

Forms available at: (<http://mosl.sos.state.mo.us/forms/sosforms.html>)

## **Professional Corporations**

Professional corporations are formed for the single purpose of practicing one of the licensed professions such as law, medicine, engineering or architecture. The key feature of this type of corporation is that all of the stock must be owned by individuals licensed to practice the profession for which the corporation was formed. Although this type of corporate structure has limited application, it should be considered where appropriate.



Forms required:

Schedule of Corporation Fees and Charges:

Domestic For Profit Instruction Sheet:

Articles of Incorporation of a For Profit Corp (form)

Forms available at: (<http://mosl.sos.state.mo.us/forms/sosforms.html>)

Professional corporations register with Secretary of State using the same standard corporation form, striking out “General” and writing/typing in “Professional.” All licensed professions need to obtain a copy of Form #76 from the Secretary of State’s Office and submit the form to the Division of Professional Registration for completion of licensure information. The completed form must be attached to their corporation forms. Contact the Secretary of State’s office at 573/751-3317 or MBAC for a copy of the form.

## **LIMITED LIABILITY COMPANIES (LLC)**

In 1993, Missouri enacted a statute creating a new form of business entity, the limited liability company. Most other states have also created this type of business entity within the past few years. A limited liability company is a non-corporate business. Members of the company can be actively involved in the management of the business, but they are shielded from liabilities. A limited liability company is not a corporation, partnership or trust; but has corporate-like liability protection for the owners and partnership-like flexibility in capital and management structure.

Limited liability companies are relatively easy to organize and maintain. In Missouri, a limited liability company can conduct any business activity. Business owners use this type of organization because it can combine the liability protection of corporations with the flexibility and tax advantages of partnerships.

A variety of different business owners are choosing to organize their businesses as limited liability companies. This type of business organization is especially attractive to family businesses or other businesses where retention of control and restrictions on transfer of ownership interests are important. Professional firms are also being organized as limited liability companies, as are real estate ventures and other businesses.

Any person may form a limited liability company by signing and filing Articles of Organization with the Secretary of State's office. LLC's are also required by state law to have an "operating agreement" (plan on how you will operate your business). Creating a limited liability company generally requires the assistance of a lawyer who has studied this type of business organization and who can shape the limited liability company to meet the needs of the owners. Limited liability companies must be properly structured and maintained for their members to be taxed as if they were a partnership or a corporation.



Forms required: Articles of Organization (LLC-1)

Forms available at: (<http://mosl.sos.state.mo.us/forms/sosforms.html>)

## JOINT VENTURES

A joint venture is a partnership of one or more sole proprietors, partnerships or corporations for the purpose of performing specific goals or tasks, such as a large construction project or the development of certain products or services. One such joint venture was the General Motors-Toyota agreement for the joint production of cars to be offered through General Motors dealerships.

The advantage of a joint venture is that existing businesses can join together without forming a new entity and without having any continuing obligations to each other beyond the joint venture agreement.

The disadvantage is that unless a party with whom a joint venture is doing business is made aware of any limitations, all parties to a joint venture are liable to such third parties whether or not the liability is specified in the joint venture agreement.

Forms required: consultation with an attorney is usually required

Forms available at: (<http://mosl.sos.state.mo.us/forms/sosforms.html>)

## FICTITIOUS NAME REGISTRATION



Missouri law requires any person who regularly transacts business in the state under a name other than his/her own "true name" must register that business name with the Secretary of State's Office under a Fictitious Name Registration. For a sole proprietorship or partnership, a business name is generally considered "fictitious" unless it contains the full name (first and last name) of the owner or all of the general partners and does not suggest the existence of additional owners. Use of a name which includes words like "company," "associates," "brothers," or "sons," will suggest additional owners and will make it necessary for the business to file and publish the

fictitious business name on company letterhead, business cards, in advertising, or on its product.



Forms required: Fictitious Name Registration

Forms available at: (<http://mosl.sos.state.mo.us/forms/sosforms.html>)

## TAX CONSIDERATIONS

Tax considerations are essential during the formation of a new business and during its entire life. When a business is just starting out, it may have little or no income or assets, and the choice of structure may not seriously affect its tax liability. However, as the business grows, the tax implications become more significant.

Choosing a particular structure does not necessarily determine how the business will be taxed. While a corporation can elect to be taxed as an individual, there are strict limitations placed upon such an election. Since the income of a sole proprietorship is taxed directly to the individual proprietor, sole proprietors should keep open the option of incorporation, which would change the tax impact on the business.



Corporate taxation allows choices, and time must be taken to understand these choices. Obtaining professional tax advice is highly recommended.

The most complicated tax structurally is that of a partnership. Usually professional advice is required for the structuring of a partnership to take fullest advantage of the opportunities available under the tax laws.

For a detailed discussion of taxes, see Chapter 4.

## OWNERSHIP CONSIDERATIONS

The entrepreneur should determine who will own the business and to what extent. Ownership gives the right to share in the profits but, under certain structure, it also gives the responsibility for the debts and obligations of the business. This is particularly true in the sole proprietorship and partnership structures.

As the business grows and matures, it may be necessary to allow additional individuals to participate in ownership. The corporate structure is best suited for adding owners. Additional stockholders can usually be added if desired by management. Adding a new partner to a partnership usually requires the consent of all other partners as well as the execution of a new partnership agreement.

## **ESTATE PLANNING CONSIDERATIONS**

An often-overlooked factor in choosing the business structure is estate planning. Planning for death or retirement is a prime concern for a new or growing company. The structure that gives the most latitude for estate planning is the corporate structure.

## **GOING OUT OF BUSINESS CONSIDERATIONS**

Generally speaking, there are two reasons for ending a business. The first is voluntary termination of the business by the owners at a predetermined time even though the business is solvent. Little consideration of a structure is needed in a voluntary termination since all the structures allow the owners to liquidate the assets and terminate the business. There is an election that a corporation can make to minimize the tax consequences. Professional help should be sought in this instance.

The second is involuntary termination which occurs when a business is unable to pay its obligations or when it has more liabilities than assets. Usually creditors force the termination of the business. Professional help is required in this case because, generally speaking, a change in the company's structure during insolvency is improper and might subject the individuals to additional personal liabilities.

As soon as it becomes apparent that a business is insolvent, owners and employees must cautiously discharge all of their duties to the various creditors in a nondiscriminatory way, whether the business is a sole proprietorship, a partnership, a corporation or a limited liability company.

Corporate officers and directors may incur personal liability by knowingly disposing of assets when the business is insolvent. The general rule is that officers and directors of a corporation, limited partners in a limited partnership and employees of a sole proprietorship (other than the sole proprietor) are not personally responsible for the debts of the business but that they may become liable if certain creditors receive preferential treatment when the business is insolvent.

There are also provisions in the Internal Revenue Code which make the individuals in charge of the business personally responsible for unpaid taxes. The same is true of limited partnerships if a limited partner takes an active role in the business, insolvent or not.

Regardless of the business structure, once a business becomes insolvent, great caution must be exercised and professional advice should be obtained.



## **FRANCHISES**

A franchise is a license from the owner of a trademark or service mark permitting another to sell a product or service under that distinctive mark. Put another way, a franchise also has been defined as an arrangement whereby a firm (franchiser), that has developed a pattern or formula for the conduct of a particular kind of business, extends to other firms (franchisees) the right to engage in the business, provided they follow an established pattern. In return, the franchiser undertakes to assist the franchisee through advertising, promotion and other advisory functions. As a general rule, the owner of the trademark or service mark has an obligation to the general public to monitor and control the quality of the product or service which is being marketed.

The federal government and the state of Missouri, through the Secretary of State's office, provide for protection of trademarks and service marks through registration.

## **PROTECTION OF INTELLECTUAL PROPERTY**

Intellectual property includes patents, trademarks, copyrights and trade secrets. Some or all of these may be the primary assets of a business.

### **Patents**

Under well-known antitrust principles, a business cannot obtain a monopoly by actions that keep out competition. However, if a business creates a new product, and the product meets certain tests, that creative contribution can be covered by a patent. A patent grants a monopoly for a period of seventeen (17) years with respect to newly created products. As a result, the incentive to invent is rewarded. The monopoly granted takes nothing from what already existed and is of limited duration. Upon expiration of the patent the invention becomes public property.

### **Trademark and Service Mark**

A trademark identifies the source or origin of products or goods being marketed, whereas a service mark identifies the source of origin of a service. Words, symbols, logos and slogans are commonly used as trademarks or service marks and, if the marks are used in commerce, they may be registerable on the Federal Register.

Since a trademark or service mark must identify source or origin, it cannot resemble another mark to the extent that confusion as to source or origin would be likely. If a proposed mark is generic or merely descriptive of the goods or service, it is not capable of identifying source or origin and cannot function as a trademark or service mark.

Contrary to popular belief, the registration of a trademark or service mark does not create the mark. Ownership originates by virtue of use of the mark. Consequently, the date of first use of a mark can be crucial, and any business adopting a new mark would be well advised to incorporate the mark promptly in a correct manner of trademark or service mark usage.

In the case of a trademark, the creation results from using the mark on or in connection with the sale of the goods. For a service mark, use can be on or in connection with the sale or advertising of the services. Under U.S. law such use is required before the mark can be registered. Accordingly, the first rights in a trademark or a service mark are necessarily common law rights acquired by virtue of use of the mark.

Because of the additional rights granted under the Federal Trademark Act, most trademark and service mark owners proceed without delay to seek registration of their marks. The principal and important advantages of federal registration are that the owner of a registration is presumed to be the owner of the mark covered by the registration and does not have to prove that ownership in order to make a case of trademark infringement. Federal registration also includes the right to sue in federal court for infringement of a trademark or service mark. In addition, the transfer rights in a trademark or service mark are more specific and the rights transferred are broader if the mark is registered.

Information for this section was provided by the Missouri Bar Entrepreneurial Law Committee, through their publication “Entrepreneurial Law Handbook.” Copies are available from our office.



For more information on patents, trademarks and service marks, please consult with a patent attorney or other qualified individuals. The SBDC at Warrensburg offers assistance with patents and trademarks; for more information on their services contact Mark Manley at 660/543-4402. You can also contact the U.S. Patent and Trademark Office at 703/308-4357 for information.

## **ACQUIRING OR MERGING WITH OTHER BUSINESSES**

The corporate form is the most flexible structure for acquiring or merging with other business. This is true even if the other business is a sole proprietorship or a partnership. When two businesses merge, all considerations of the different structure must be re-evaluated. The same questions that were considered when the original business was established must be asked again for the new business.



## Purchase of Existing Business

Before you purchase an existing business, be sure that you obtain a “Certificate of No Tax Due” (issued by the Missouri Department of Revenue) from the previous owner of the business. Without this document, you may also be purchasing existing sales tax and/or withholding tax obligations.

Missouri State Tax Rule 12 CSR 10-3.500 states:

1. Every person purchasing a business or stock of goods shall immediately notify the Director of Revenue of the business name, owner’s name, date of purchase and type of business or stock of goods.
2. All successors/purchasers shall withhold enough of the purchase money to cover the amount of taxes, interest or penalties due and unpaid by all former owners or predecessors, whether immediate or not. The money should be withheld until the former owners or predecessor produce a receipt from the Director of Revenue showing full payment has been made to the state or a certificate stating that no taxes are due. The certificate of no tax due should apply to all periods through the date of closing. Otherwise, the successor/purchaser shall become personally liable for the unpaid tax, penalty and interest accrued.

Example: Mr. Smith purchases a business from Mr. Jones for \$50,000.00. He acquires all the inventory. He does not ask Mr. Jones for a certificate of no tax due. Mr. Smith comes in to apply for a Missouri Tax I.D. number and receives it. However, after receiving his license for the business he finds Mr. Jones has sales tax delinquencies totaling \$20,000.00 which Mr. Smith must pay because he is now successor. Mr. Smith is now paying two people for the business—Mr. Jones and the Department of Revenue.

3. All purchasers have a duty to discover whether taxes are due and unpaid by any former owners or predecessors, whether immediate or not, and ignorance will not relieve a purchaser from successor tax liability. Reliance on an affidavit pursuant to Missouri’s Bulk Transfer Act, stating that there are no creditors of the business, will not relieve a purchaser from successor tax liability.



To prevent this problem, obtain a “Certificate of No Tax Due” from the seller BEFORE you purchase the business. If you have any questions concerning Successorship, please call 573/751-9268, or write the Missouri Department of Revenue, Collections and Taxpayer Services Bureau, P.O. Box 3666, Jefferson City, MO 65105-3666.

## EMPLOYER IDENTIFICATION NUMBER (EIN)

Every employer maintaining an office or transacting any business in Missouri and making payment of wages to a resident or nonresident individual must obtain a Missouri Employer Tax Identification Number, which is required by federal law if you are an employer, partnership or corporation. Some entities, such as financial institutions, also require a business to have an identification number. The application form (SS-4) is available from the Internal Revenue Service (IRS) or from our office.

## OCCUPATIONAL LICENSES

The state of Missouri licenses or certifies a variety of occupations and activities. The following list provides information on the more common occupations, the administering agency and a phone number for additional information on licensing requirements:

OCCUPATION:	ADMINISTERING AGENCY:	PHONE:
ACCOUNTANT	PROFESSIONAL REGISTRATION	573/751-0012
ADULT DAY CARE PROGRAM	DEPT. OF SOCIAL SERVICES	573/751-3082
ANIMAL CARE FACILITY	DEPT. OF AGRICULTURE	573/751-2540
APIARY (Beekeepers)	DEPT. OF AGRICULTURE	573/751-5505
ARCHITECTS	PROFESSIONAL REGISTRATION	573/751-0047
ATHLETIC TRAINERS	PROFESSIONAL REGISTRATION	573/751-0098
ATHLETICS	PROFESSIONAL REGISTRATION	573/751-0243
AUDIOLOGY CLINICAL	PROFESSIONAL REGISTRATION	573/751-0098
BARBER	PROFESSIONAL REGISTRATION	573/751-0805
BEVERAGE MANUFACTURER	DEPT. OF HEALTH	573/751-6090
CATERERS PERMIT (Temp Liquor License)	DEPT. OF PUBLIC SAFETY	573/751-2333
CERTIFIED PESTICIDE PRIVATE	DEPT. OF AGRICULTURE	573/751-5504
CHILD PLACING AGENCY	DEPT. OF SOCIAL SERVICES	573/751-4920
CHIROPRACTOR	PROFESSIONAL REGISTRATION	573/751-2104
COSMETOLOGY	PROFESSIONAL REGISTRATION	573/751-1052
DAY CARE FACILITY (Adult)	DEPT. OF SOCIAL SERVICES	573/751-3082
DAY CARE FACILITY (Child)	DEPT. OF HEALTH	573/751-2450
DEAD ANIMALS, DISPOSAL OF	DEPT. OF AGRICULTURE	573/751-6580
DENTISTS	PROFESSIONAL REGISTRATION	573/751-0040
EGG PROCESSORS	DEPT. OF AGRICULTURE	573/751-5639
EMBALMERS & FUNERAL DIR.	PROFESSIONAL REGISTRATION	573/751-0813
EMPLOYMENT AGENCIES	PROFESSIONAL REGISTRATION	573/751-0293
ENDOWED CARE CEMETERIES	PROFESSIONAL REGISTRATION	573/751-0849
ENGINEERS	PROFESSIONAL REGISTRATION	573/751-0047
FAMILY DAY CARE HOME	DEPT. OF SOCIAL SERVICES	573/751-2450
FIREWORKS PERMIT	DEPT. OF PUBLIC SAFETY	573/751-2930
FISHING PERMIT (Commercial)	DEPT. OF CONSERVATION	573/751-4115
FOOD ESTABLISHMENT	DEPT. OF HEALTH	573/751-6090
GAS/KEROSENE DISTRIBUTORS	DEPT. OF AGRICULTURE	573/751-7062
GEOLOGISTS	PROFESSIONAL REGISTRATION	573/526-7625
GRAIN WAREHOUSE/GRAIN DEALER	DEPT. OF AGRICULTURE	573/751-4112
GREENHOUSE	DEPT. OF AGRICULTURE	573/751-5505
GROUP DAY CARE	DEPT. OF SOCIAL SERVICES	573/751-2450
HEALING ARTS	PROFESSIONAL REGISTRATION	573/751-0098
HEARING INSTRUMENT SPECS	PROFESSIONAL REGISTRATION	573/751-0240

HOME HEALTH AGENCY	DEPT. OF HEALTH	573/751-6336
INSURANCE: AGENT & BROKER	DEPT. OF INSURANCE	573/751-3518
INTERPRETERS FOR THE DEAF	PROFESSIONAL REGISTRATION	573/526-7787
JUNKYARD (Operate & Maintain)	DEPT. OF HIGHWAY & TRANSP.	573/751-0982
LAND SURVEYORS	PROFESSIONAL REGISTRATION	573/751-0047
LANDSCAPE ARCHITECTS	PROFESSIONAL REGISTRATION	573/751-0039
LIVESTOCK MARKET	DEPT. OF AGRICULTURE	573/751-4358
LODGING ESTABLISHMENT	DEPT. OF HEALTH	573/751-6090
LONG TERM CARE FACILITY	DEPT. OF AGRICULTURE	573/751-4278
MENTALLY ILL, DAY PROGRAM FOR	DEPT OF MENTAL HEALTH	573/751-4024
MILK PRODUCTS PROCESSOR	DEPT. OF AGRICULTURE	573/751-3830
MILK PRODUCTS DISTRIBUTION	DEPT. OF AGRICULTURE	573/751-3830
MILK, RAW: EXPORTS OF	DEPT. OF AGRICULTURE	573/751-3830
MILK, RAW: BROKERAGE LICENSE	DEPT. OF AGRICULTURE	573/751-3830
MOBILE HOMES, MANUFACTURER	ECONOMIC DEVELOPMENT	573/751-2557
MODULAR UNITS, MANUFACTURER	ECONOMIC DEVELOPMENT	573/751-2557
MOISTURE MEASURING DEVICES	DEPT. OF AGRICULTURE	573/751-3440
MOTOR VEHICLE INSPECTION STA.	DEPT. OF PUBLIC SAFETY	573/751-3313
MOTOR VEHICLE SALVAGE	DEPT. OF REVENUE	573/751-8638
MOTOR VEHICLE DEALER REGIS.	DEPT. OF REVENUE	573/751-8638
NURSERY DEALER	DEPT. OF AGRICULTURE	573/751-5505
NURSING	PROFESSIONAL REGISTRATION	573/751-0681
OCCUPATIONAL THERAPISTS	PROFESSIONAL REGISTRATION	573/751-0877
OPTOMETRY	PROFESSIONAL REGISTRATION	573/751-0814
PERFUSIONISTS	PROFESSIONAL REGISTRATION	573/751-0098
PESTICIDE DEALER LICENSE	DEPT. OF AGRICULTURE	573/751-5504
PESTICIDE APPLICATOR LICENSE	DEPT. OF AGRICULTURE	573/751-5504
PHARMACY	PROFESSIONAL REGISTRATION	573/751-0092 or 93
PHYSICAL THERAPISTS	PROFESSIONAL REGISTRATION	573/751-0098
PHYSICIANS AND SURGEONS	PROFESSIONAL REGISTRATION	573/751-0098
PHYSICIAN'S ASSISTANTS	PROFESSIONAL REGISTRATION	573/751-0098
PODIATRY	PROFESSIONAL REGISTRATION	573/751-0873
PROFESSIONAL COUNSELORS	PROFESSIONAL REGISTRATION	573/751-0018
PSYCHOLOGISTS	PROFESSIONAL REGISTRATION	573/751-0099
REAL ESTATE AGENTS	PROFESSIONAL REGISTRATION	573/751-2628
REAL ESTATE APPRAISERS	PROFESSIONAL REGISTRATION	573/751-0038
RESIDENTIAL CARE AGENCY	DEPT. OF SOCIAL SERVICES	573/751-4920
RESPIRATORY CARE PRACTITIONERS	PROFESSIONAL REGIS.	573/751-5864
SOCIAL WORKERS, CLINICAL	PROFESSIONAL REGISTRATION	573/751-0885
SPEECH PATHOLOGY	PROFESSIONAL REGISTRATION	573/751-0098
SWINE QUARANTINED FEEDLOT	DEPT. OF AGRICULTURE	573/751-4358
THEATRICAL BOOKING AGENCIES DIVISION	LABOR STANDARDS	573/751-3403
TIMBER, TREATED, DEALER	DEPT. OF AGRICULTURE	573/751-5502
TIMBER, TREATED, PRODUCER	DEPT. OF AGRICULTURE	573/751-5502
VETERINARY MEDICAL	PROFESSIONAL REGISTRATION	573/751-0031

## STATE LICENSE AND PERMIT REQUIREMENTS

There are numerous licenses, fees, permits and other requirements at the state level with which businesses must comply. This section is intended to give you a general overview of the requirements.



## **State Business Licenses, Fees, Permits and Regulations**

The Missouri Business Assistance Center (MBAC) maintains a database, referred to as the “First Stop Shop,” that includes information on all of the state-level licenses, fees, permits and requirements related to business operations in Missouri. The database tracks the data by SIC (Standard Industrial Classification) codes. This code allows MBAC to produce a listing based on the type of business activity. The database currently contains information on nearly 300 licenses, permits and other requirements. The information ranges from the standard business requirements of sales tax numbers and vehicle licensure to more obscure requirements. Data is collected from all state agencies. For more information and assistance, please contact the Missouri Business Assistance Center at 573/751-2863 or e-mail at: [mbac@mail.state.mo.us](mailto:mbac@mail.state.mo.us)

## **Motor Vehicle Licensing, Registration**

Missouri law defines a commercial motor vehicle as a motor vehicle designed or regularly used for carrying freight and merchandise, or more than eight passengers. Vanpools (used to transport employees to and from work) and shuttle buses (used to transport customers to and from your place of business) are not included in this definition and may be registered as “regular” motor vehicles.

Under this definition, all trucks are commercial vehicles in Missouri because they are designed to carry freight.

A commercial motor vehicle whose operations are confined solely to a 25-mile area around a single municipality is defined as a “local commercial vehicle.” These definitions are used to determine registration fees for the various types of vehicles.

Unless your commercial vehicle is licensed for less than 12,000 lbs., and is not regularly used for commercial purposes, you must display the following information on your vehicle or vehicles:

1. The name of the owner
2. The address from which you operate the vehicle, or the number issued to the carrier by the Missouri Division of Transportation
3. If it is a local vehicle, the word “LOCAL.”

Licensing: You do not need to have your vehicle inspected if:

- Your commercial vehicle is used for interstate commerce and is registered with the Missouri Highway Reciprocity Commission.
- The vehicle was originally issued a registration for less than one year.

- You are registering a vehicle that has not been in Missouri in the past 60 days.
- You have a registration receipt showing that the license plate being renewed was properly transferred within the past six months.

You will need a statement saying that the vehicle has not been in Missouri and that you will have the vehicle inspected within 10 days of bringing it to Missouri. When driving your commercial vehicle, you must abide by Missouri law concerning license plates, license plate lights, load projections from the vehicle, towlines, and slow moving vehicle signs. These laws are found in Chapter 301 of the Revised Statutes of Missouri.

You can find a brief summary of these and other motor vehicle and driving laws in the MISSOURI DRIVER GUIDE, published by the Missouri Department of Revenue. For a copy, please write to the Drivers License Bureau, P.O. Box 200, Jefferson City, MO 65105, and request a copy of the Missouri Driver Guide.

### **Commercial Drivers Licensing**

Missouri drivers who transport people or property for hire must carry a Class A, B, C or E drivers license. The class you and your drivers require depends on the class of vehicle you intend to use commercially.

If you are hiring drivers who will be driving class A, B or C vehicles, you should obtain a Commercial Drivers Licensing manual from the Missouri State Highway Patrol or the Missouri Drivers License Bureau.

## **LOCAL LICENSES AND PERMITS**

Contact with local (county, city, township) government agencies early in the planning stages of your business is very important. This contact will provide you with information that is essential to your business operation.

Most cities, and some counties, require businesses to be licensed. Check with the city and county clerk for the requirements in your community and county.

### **Local Zoning Regulations**

Be sure to check with the local city and/or county planning/zoning department to make sure that the site you have selected for your business is zoned to accommodate the activities of your business. This is especially true if you plan to operate your business from your home.

